

WC 04-39

KELLEY DRYE & WARREN LLP

A LIMITED LIABILITY PARTNERSHIP

1200 19TH STREET, N.W.

SUITE 500

WASHINGTON, D.C. 20036

(202) 955-9600

KDW STAMP-IN

NEW YORK, NY
TYSONS CORNER, VA
CHICAGO, IL
STAMFORD, CT
PARSIPPANY, NJ

BRUSSELS, BELGIUM
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BANGKOK, THAILAND
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TOKYO, JAPAN

FACSIMILE

(202) 955-9792

www.kelleydrye.com

DIRECT LINE: (202) 955-9887

EMAIL: mconway@kelleydrye.com

February 10, 2004

RECEIVED

FEB 10 2004

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

BY HAND DELIVERY

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Section 63.71 Application of XO Communications, Inc. on Behalf of Itself
and Certain of its Subsidiaries

Dear Ms. Dortch :

On behalf of XO Communications, Inc., transmitted herewith are an original and six (6) copies of an application for authority to *potentially* discontinue the provision of DSL services to certain customers in California and New York. As explained in XO's initial application filed on January 12, 2004, in connection with a migration of certain customers that receive DSL services over the XO network to a different underlying network, some of these customers *may* be disconnected. Since the filing of that application, XO determined that approximately 17 customers involved in the migration did not receive notice and potentially could be disconnected. Thus, XO has recently sent them notice and is filing this application out of an abundance of caution. Please date-stamp the enclosed extra copy of this filing and return it in the envelope provided. Should you have any questions with respect to this matter, please do not hesitate to contact the undersigned at (202) 955-9667.

Respectfully submitted,

Melissa Conway
Melissa S. Conway

Enclosures

cc: Service List
Rodney McDonald, Competitive Policy Division, Wireline Competition Bureau
Scott Bergmann, Competitive Policy Division, Wireline Competition Bureau

In the Matter of)
)
Section 63.71 Application of)
XO COMMUNICATIONS, INC. on Behalf of Itself)
and Certain of its Subsidiaries)
)

On January 12, 2004, XO Communications, Inc., on behalf of itself and certain of its subsidiaries¹ (collectively, "XO"), filed an application seeking authorization pursuant to Section 214(a) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 214, and Section 63.71 of the Commission's Rules, 47 C.F.R. § 63.71, to potentially discontinue their provision of domestic telecommunications services – namely, DSL services – to certain customers in their respective states, California, New York and Virginia. Specifically, XO explained in its application that, in connection with a migration of certain XO customers that receive DSL services over the XO network to a different underlying network, some of these customers may be disconnected. Since the filing of that application, XO determined that approximately 17 customers involved in the migration did not receive notice and potentially could be disconnected, and thus, XO has just recently sent them notice and is filing this application out of an abundance of caution. XO remains hopeful, however, that all of the

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DC01/CONWM/216295.1

As explained in the initial application, for a variety of network optimization reasons, XO plans to consolidate its DSL network infrastructure and, as a result, will migrate DSL customers served out of certain central offices in the states of California, New York and Virginia that currently receive service via XO's DSL network to the network of its partner, Covad Communications ("Covad"). These customers would continue to receive substantially the same DSL service after the migration as they do currently, and would continue as XO customers; the only difference will be the underlying network over which the services are provided. The initial application noted that, of the thousands of DSL customers currently served by XO, no more than 160 customers will be affected by this migration: 142 business customers in California, 13 business customers in New York and 5 business customers in Virginia. This application concerns 16 of the business customers in California and 1 business customer in New York. The proposed migration will allow XO to streamline its services and costs, while enabling XO to continue to provide the same quality of service to its customers. XO already has thousands of customers utilizing Covad's network for their DSL service. Since 1999, XO has had a resale partnership with Covad, the largest reseller of DSL in the United States. Importantly, as noted above, the affected DSL customers will continue to receive substantially the same DSL service from XO, albeit provisioned over Covad's network.

Although it may be that all 17 of the customers covered by this application will be successfully migrated, it is possible that some of these customers will not wish to be migrated or will fail to respond to XO prior to the date by which these customers must either agree to be migrated or be discontinued, currently anticipated to be: *March 22, 2004*. Thus, XO may need to discontinue DSL service to such customers (if any), and the Applicants therefore hereby seek approval to do so should it be necessary. There will be no harm to the affected customers,

should there be any such customers, upon discontinuance. Indeed, subscribers will have ample opportunity to select another telecommunications carrier for their telecommunications needs, and the ILEC(s) in their area will continue to offer them DSL service. Also, the discontinuance date, March 22, 2004, will be a "soft" disconnect date; that is, on the discontinuance date (March 22, 2004), the customers' DSL service will be suspended, but XO will maintain their circuits for another 7-10 days allowing them to contact XO and reinstate and migrate their subscribership at no extra charge.

Further, although XO will no longer be providing DSL services to these customers, XO will continue to provide both local and long distance services to customers in the above-noted states pursuant to existing authorizations and will continue to provide service to their other customers in these states. The proposed potential discontinuance will not reduce, impair or otherwise affect XO's provision of services other than DSL service to this subset of customers. By migrating these customers to a different network for their DSL service, XO will be better able to focus on the provision of quality telecommunications services to its subscribers. Therefore, the proposed discontinuance is in the public interest.

Applicants provide the following information pursuant to Section 63.71 of the Commission's Rules:

1. Name and Address of the Carrier: XO California, Inc. and XO New York, Inc. are wholly owned subsidiaries of XO Communications, Inc. Each of the Applicants can be reached at 11111 Sunset Hills Road, Reston, Virginia 20190.

2. Date of Planned Service Discontinuance, Reduction or Impairment: The Applicants plan to discontinue DSL service to the 17 affected customers in the states listed above, if necessary, on March 22, 2004, or as soon thereafter as any necessary regulatory

approvals are obtained. Applicants understand that this application will be automatically granted on the 31st day after public notice of filing unless the Commission notifies the Applicants to the contrary.

3. Points of Geographic Areas of Service Affected: Should the discontinuance be necessary, Applicants will discontinue the provision of DSL service to the affected customers covered by the instant application in the states of California and New York.

4. Brief Description of Type of Service Affected: Should the discontinuance be necessary, XO intends to discontinue the provision of DSL service to affected customers.

5. Brief Description of the Dates and Methods of Notice to All Affected Customers: Applicants provided written customer notice in accordance with the requirements of Section 63.71(a) of the Commission's Rules to the customers covered by the instant application by notice dated February 6, 2004. The notices were sent by U.S. mail, postage prepaid. With the exception of the date of potential discontinuance, March 22, 2004, the substance of the letter is identical to the substance of the letter that was sent to the rest of the customers covered by XO's initial application. Copies of the notice are subsequently being sent via electronic mail as well. A copy of the notice is appended hereto as *Exhibit A*.

6. Whether the Carrier is Considered Dominant or Non-dominant with Respect to the Service to be Discontinued, Reduced or Impaired: Applicants are considered non-dominant carriers with respect to the affected services.

In accordance with Section 63.71 of the Commission's Rules, a copy of this Application is being mailed to the Governors and public services commissions of the states of California and New York, and to the Special Assistant for Telecommunications for the Secretary of Defense, concurrently with the filing of this application.

Additional questions regarding this application may be addressed to the undersigned or to Melissa Conway, KELLEY DRYE & WARREN LLP, 1200 19th Street, N.W., Suite 500, Washington, D.C. 20036, (202) 955-9667, mconway@kelleydrye.com.

Respectfully submitted,

XO COMMUNICATIONS, INC.

By:



Lee Weiner
Senior Vice President, General Counsel
XO COMMUNICATIONS, INC.
11111 Sunset Hills Road
Reston, Virginia 20190

Phone: (703) 547-2816
Fax: 703-547-2023

Dated: February 10, 2004

EXHIBIT A

February 6, 2004

Dear XO DSL Customer,

Your immediate attention is required to ensure your uninterrupted DSL service from XO Communications ("XO") and to receive a **Free Month** of XO DSL service!

XO is taking several steps to consolidate the XO™ DSL network infrastructure while working with Covad, our long standing DSL partner, to maintain DSL service for impacted customers. As a result of these network changes, we are planning to migrate your XO DSL service to Covad's DSL network. This migration is impacting XO customers in the states of California, New York and Virginia. Please be aware that although we are migrating your DSL service to the Covad network, you will remain an XO customer. These changes will help us to continue to provide you with the best DSL service and network performance possible.

In the coming days, an XO DSL Care representative will be contacting you to begin the migration process and answer your questions. Following this initial contact, XO DSL Service Delivery will guide you through the migration process.

Please know that we will not proceed with your migration until we have spoken to you and confirmed your understanding. **However, if we are unable to reach you, we do not hear from you by Monday, March 22, 2004, or you do not agree to the migration, your service will be disconnected at 2:00 pm EST on that day.**

The Federal Communications Commission will normally authorize this proposed discontinuance of service unless it is shown that customers would be unable to receive service or a reasonable substitute from another carrier or that the public convenience and necessity is otherwise adversely affected. If you wish to object, you should file your comments within 15 days after receipt of this notification. Address them to the Federal Communications Commission, Washington, DC 20554, referencing the \$63.71 Application of XO Communications, Inc. Comments should include specific information about the impact of this proposed discontinuance upon you or your company, including any inability to acquire reasonable substitute service.

If you have any immediate questions or you wish to confirm your understanding and desire to move forward with the migration, please feel free to contact the DSL Care Team at 1-888-575-6398, option 2, then option 2 again, followed by option 5.

We appreciate your business and support throughout this migration process.

Best regards,

DSL Care Team
XO Communications

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Section 63.71 Application was served this 10th day of February 2004, by mailing true and correct copies thereof, postage prepaid, to the following persons at the addresses listed below.


Secretary of Defense
ATTN: Special Assistant for Telecommunications
Pentagon
Washington, DC 20301

California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Governor Arnold Schwarzenegger
State Capitol Building
Sacramento, California 95814

New York Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

Governor George E. Pataki
State Capitol
Albany, New York 12224


Courtenay P. Adams